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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

I.T.R. No.17 of 1993

Date of decision:1.11.2006

The Commissioner of Income Tax, Jalandhar

...Appellant

Versus

M/S Cine Payal Jalandhar

...Respondent

CORAM: HON'BLE MR.JUSTICE ADARSH KUMAR GOEL
HON'BLE MR.JUSTICE RAJESH BINDAL

Present: Mr.N.L.Sharda, Advocate.

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JUDGMENT

Following question of law has been referred for opinion of this Court by the Income Tax Appellate Tribunal, Amritsar Bench, Amritsar arising out of its order dated 15.5.1992 passed in I.T.A.No.788(ASR)/1989 , in respect of the assessment year 1980-81.

> "i) Whether on the facts and in the circumstance of the case, the learned I.T.A.T. was right in law in allowing registration to the firm for the assessment year 1980-81 on the basis of orders granting continuation of registration in succeeding years in view of the fact that continuation of registration is granted u/s 184(7) only when the firm has been registered u/s 185(1) in the first year?"

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The assessee is a registered firm and filed its return for the assessment year 1980-81 on 30.6.1980. The assessment was completed on 26.2.1983 in the status of U.R.F. The same was set aside by the Appellate Tribunal vide order dated 1.12.1983. Fresh order was passed under Section 185(1)(b) of the Act on 29.3.1986. The Appellate Authority set aside the said order and remanded the case for fresh consideration by the Assessing Officer. On further appeal, the Tribunal held that the assessee should have been granted registration to the firm for the assessment year 1980-81. The Tribunal observed as under:-

> "The issue has got to be decided in favour of the assessee since for the immediately succeeding assessment year viz. 1981-82 following order has been made on the subject matter:-
>
> > "Form No.12 has been filed which is in time and in order. All the legal formalities have been observed. Continuation of registration is, therefore, granted to the firm for the assessment year 1981-82."
>
> 2.1 For the assessment year 1982-83, following order has been passed on the above subject:-
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> > "Order u/s 185(1)(a)
> >
> > Continuation of registration to the firm having already been granted at the time of framing original assessment vide my predecessor's orders dated 14.3.85, the same is allowed now also.
> >
> > Sd/
> > (Rakesh Suri)IRS
> > Income-tax Officer, Distt.1(i)
> > Jalandhar"
>
> 2.2 For the assessment year 1983-84 with the same facts the order of the Assessing Officer on the issue reads as

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under:

Order under Sec.185(1)(a):

Application for registration duly signed by all the partners and accompanied by partnership deed in original and copy thereof was filed in this office on 16.8.1982. As per partnership deed dated 20.2.1982, which is operative from 1.9.1981, the constitution of the firm is as under:-

Smt.Tara Loona	27%
Sh.Anil Loona	15%
Sh.Sunil Loona	15%
Sh.Ravi Loona	43%

Prior to the constitution of the firm, business was carried on by the partners alongwith Shri Surinder Loona under same name and style. Shri Surinder Loona retired and the present firm came into existence. Thus, there is only change in the constitution of the firm, registration is granted for the asstt. Year 1983-84."

Sd/
(D.S.Walia)
Income-tax Officer,
9.8.85 Distt.II(i) Jalandhar

3. Similar orders have been made for the assessment years 1984-85, 1985-86, 1986-87, 1987-88 and 1988-89 and in all these years, the assessee has been granted the status of a registered firm.

4. For obvious reasons, we grant to the assessee, the status of the registered firm for this year also."

The Tribunal observed that since for the immediately succeeding assessment years i.e. from 1981-82 to 1988-89

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continuation of registration of the firm was allowed, there was no reason to doubt the genuineness of the firm for the year 1980-81.

We have heard learned counsel for the Revenue and perused the finding on record.

The Tribunal has held that the assessee was treated as registered firm for the assessment years 1981-82 to 1988-89. It was not a case where the firm was not genuine. Though for every assessment year a separate order was required to be passed under Section 185 of the Income Tax Act, 1961 yet once the existence of the firm was accepted as genuine for a long period, the view taken by the Tribunal that the assessee should have been treated as registered firm for the year in question cannot be held to be erroneous. In **Bhaichand Amoluk & Co. Vs. C.I.T., (1962) XLIV ITR 511 (SC)**, it was held by the Hon'ble Supreme Court that a finding as to the existence or otherwise of a firm is ordinarily a question of fact unless the same is to be perverse or based on misdirection in law.

Nothing could be pointed out by the counsel for the Revenue from the material on record to come to a conclusion that the findings recorded by the Tribunal are perverse in any manner.

Accordingly, the question referred is answered against the revenue and in favour of the assessee.

(Adarsh Kumar Goel)
Judge

November 1 ,2006 **(Rajesh Bindal)**
Pka **Judge**